

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CRIMINAL NO. 1:08cr135WJG-RHW

PAUL RICHARD ARCENEAUX

ORDER

THIS CAUSE is before the Court on the motion [41] of the United States of America for costs of prosecution pursuant to 26 U.S.C. § 7203. Defendant Paul Richard Arceneaux was found guilty of all three counts of the Indictment against him on April 9, 2009. (Ct. R., Doc. 26. He was sentenced on July 15, 2009, but the written Judgment has not yet been entered pending the ruling on this motion.

Costs of prosecution may be included (as part of the sentence imposed for a violation of 26 U.S.C. § 7203. Costs of prosecution are those costs that a federal court may tax in a civil action. *United States v. Dunkel*, 900 F.2d 105, 108 (7th Cir. 1990), *vacated on other grounds*, 498 U.S. 1043 (1991). These costs are enumerated at 28 U.S.C. § 1920 and include the following as recoverable costs: (1) fees of the clerk and marshal; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees under section 1923; and (6) compensation of court-appointed experts, compensation of interpreters, and salaries, fees,

expenses, and costs of special interpretation services under section 1828. *Home Builders Ass'n of MS v. City of Madison, MS*, 191 F.R.D. 515, 517 (S.D. Miss. 1999).

The United States has included a request for witness fees in the amount of \$1,149.04 in its motion. (Ct. R., Doc. 41-2, pp. 1-20.) The Court finds that this amount is appropriately taxed as a cost against Arceneaux. 28 U.S.C. § 1920(3).

In addition, the United States seeks \$8,959.89 in attorneys fees as a cost of prosecution. (Ct. R., Doc. 41-3.) Arceneaux has challenged this as an invalid request as part of the cost of prosecution. (Ct. R., Doc. 45, p. 2.) The Court can find no precedent for an award of United States' attorneys fees in a criminal proceeding. In addition, because costs under 28 U.S.C. § 1920 do not include an award of attorneys fees, the Court finds that the request to include attorneys fees in the costs of prosecution should be denied. It is, therefore,

ORDERED AND ADJUDGED that motion [41] of the United States of America for costs of prosecution pursuant to 26 U.S.C. § 7203 be, and is hereby, granted in part and denied in part. It is further,

ORDERED AND ADJUDGED that the United States' request for an award of \$1,149.04 in witness fees as part of the costs of prosecution be, and is hereby, granted. It is further,

ORDERED AND ADJUDGED that the United States' request for an award of \$8,959.89 in attorneys fees as part of the costs of prosecution be, and is hereby, denied.

SO ORDERED AND ADJUDGED, this the 16th day of August, 2009.

Walter J. Sex III
UNITED STATES SENIOR DISTRICT JUDGE